

DAVID A. ESCAMILLA
COUNTY ATTORNEY

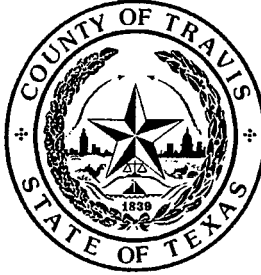
STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH STREET
GRANGER BLDG., 5TH FLOOR
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



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JUL 23 2014

TRANSACTIONS DIVISION
OPEN RECORDS DIVISION
JOHN C. HILLE, JR., DIRECTOR †

BARBARA J. WILSON

MARY ETTA GERHARDT

TENLEY A. ALDREDGE

DANIEL BRADFORD

ELIZABETH H. WINN

JENNIFER KRABER

† Member of the College
of the State Bar of Texas

July 23, 2014

02-541640 -14
541640

Hand Delivered

Ms. Amanda Crawford, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Requests from **Robert Alden** on 7/9/2014—Request for Ruling

Dear Ms. Crawford:

On behalf of the Travis County District Attorney's Office ("TCDA") and the Travis County Medical Examiner's Office ("TCME") and under Government Code section 552.301, we are requesting a decision regarding the status of certain information sought in the attached request. The TCDA and TCME assert that the requested information is excepted from disclosure under sections 552.101-552.153 of the Act, along with the exceptions incorporated therein. Accordingly, we are asking for a decision from your office with respect to the requested information. By copy of this letter, we are informing the requestor that we wish to withhold the requested information and that we are asking for a decision from your office.

A supplemental brief setting forth the applicability of the above-referenced exceptions and representative samples of the requested information will be submitted to your office within fifteen business days after receipt of the request.

If you have any questions, please contact me at (512) 854-4168, or by e-mail at elizabeth.winn@co.travis.tx.us.

Sincerely,



Elizabeth Hanshaw Winn
Assistant County Attorney

Enclosures: Request Letters

c:

Dayna Blazey
Travis County District Attorney's Office
(emailed, without enclosures)

Patty Sunderland
Travis County Medical Examiner's Office
(emailed, without enclosures)

Robert Alden
Byrd Davis Furman & Alden LLP
707 West 34th Street
Austin, TX 78705-1204
(via email to without enclosures)

Ramiro Gonzalez

Subject: Open Records Request

From: Robby Alden

Sent: Wednesday, July 09, 2014 3:17:48 PM (UTC-06:00) Central Time (US & Canada)

To: DAOpenRecordsRequests

Subject: Open Records Request

I represent the son of John Schaefer, who was killed by Austin Police Officer Whitted on Friday, March 1, 2013. Now that the Grand Jury investigation has been completed, I hereby request the documents identified below pursuant to Chapter 552 of the Texas Government Code:

- All 911 recordings and transcripts of recordings from the morning of 3/1/2013 pertaining to 10617 Lanshire.
- All recordings, data and videos from the "Digital Mobile Audio Video" (DMAV) data from Lt. Suitt's car, unit #8611 I believe, from Lt. Suitt's interview of Officer Whitted.
- GSR reports from John Schaefer and Officer Whitted.
- The toxicology report for Officer Whitted taken after the shooting.
- Audio recording of Officer Whitted's walk through with CLEAT representation, on scene.
- All DMAV data and recordings from Officer Whitted's car, unit 8619
- Full autopsy report of John Schaefer.
- DMAV data and recordings from Officer Ramos' car related to the shooting.
- DMAV data and recordings from Officer Torres' car related to the shooting.
- Recording of Officer Whitted's interview with Det. Swann and Det. Vetrano related to the shooting.
- All squad car communication from the morning of 3/1/13 related to the shooting or Officer Whitted, including text messages and any other data or recordings.
- The administrative order delivered at St. David's Hospital by Sgt. Richard Guajardo #3440 to Officer Whitted.
- All 911 complaints from John Schaefer for the prior nine months.
- Det. Vetrano's complete investigation file.

Any orders, memoranda, or other documents generated by the Austin Police Department related to Officer Whitted and his shooting of John Schaefer.

BYRD DAVIS FURMAN & ALDEN, L.L.P.

ATTORNEYS AND COUNSELORS

EST'D 1959



707 West 34th Street, Austin, Texas 78705-1294

Don L. Davis**
dondavis@byrddavis.com

James H. Furman**
jfurman@byrddavis.com

Robert C. Alden*
ralden@byrddavis.com

Kevin O. Henrichson
khenrichson@byrddavis.com

Of Counsel
Derek L. Davis
ddavis@byrddavis.com

L. Tonnatt Byrd
(1921 - 2007)
Jack C. Eisenberg
(1927-2011)
David H. Walter
(1948 - 2003)

* Board Certified
Personal Injury Trial Law,
Texas Board of Legal
Specialization

* AV Rated by
Martindale-Hubbell

* Licensed in Texas
and Colorado

July 9, 2014

ME 13-00925

David Dolinak, MD
Chief Medical Examiner
1213 Sabine Street
Austin, TX 78701

Telecopy: 512-854-9044

Re: Autopsy report for John Schaefer

Dear Dr. Dolinak:

I represent the son of John Schaefer, who was killed by Austin Police Officer Whitted on Friday, March 1, 2013. I have previously requested your autopsy report and related records for your examination of Mr. Schaefer. The County filed objections with the Attorney General because of the pending criminal investigation of Officer Whitted. That process has now been completed with the Grand Jury's "no bill" of Officer Whitted.

Pursuant to Chapter 552 of the Texas Government Code, I am making a second request for a copy of your report, along with all notes and photographs made during the course of the examination, and any documents the examiner may have reviewed in the course of preparing the report.

9 JUL '14 PM4:01

Very truly yours,

BYRD DAVIS FURMAN & ALDEN, L.L.P.

Robert Alden
Robert Alden

Cc: John Schaefer

Elizabeth Hanshaw Winn
Assistant Travis County Attorney
P.O. Box 1748
Austin, TX 78767

PHONE: (512) 454-3751 • (800) 344-3751

FAX: (512) 451-5857

WWW.BYRDDAVIS.COM

(Listed in Martindale-Hubbell Preeminent Law Firms)

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JUL 30 2014

DAVID A. ESCAMILLA
COUNTY ATTORNEY

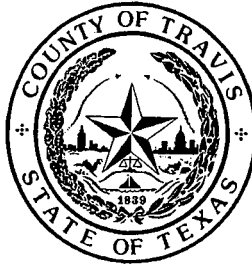
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July 30, 2014

Hand Delivered

Ms. Amanda Crawford, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Requests from **Robert Alden** on 07/9/2014—Supplemental Brief (for
TCDA only) (File No. 537468)

Dear Ms. Crawford:

On July 23, 2014, on behalf of the Travis County District Attorney's Office ("TCDA") and the Travis County Medical Examiner's Office ("TCME"), we submitted a letter to your office asking for a ruling on this request. Below is a supplemental brief for the ruling request for TCDA only, and explains the specific exceptions in Government Code chapter 552 that we believe control over the responsibility of the TCDA to release some of the responsive information.

A portion of the requested information has already been released to the requestor, and the TCDA have no responsive information to portions of the requests, as noted below.

Specifically, the requestor has asked the Travis County District Attorney's Office for the following information:

1. All 911 recordings and transcripts of recordings from the morning of 3/1/2013 pertaining to 10617 Lanshire.
2. All recordings, data and videos from the "Digital Mobile Audio Video" (DMAV) data from Lt. Suitt's car, unit #8611 I believe, from Lt. Suitt's interview of Officer Whitted.
3. GSR reports from John Schaefer and Officer Whitted.

4. The toxicology report for Officer Whitted taken after the shooting.
5. Audio recording of Officer Whitted's walk through with CLEAT representation, on scene.
6. All DMAV data and recordings from Officer Whitted's car, unit 8619
7. Full autopsy report of John Schaefer.
8. DMAV data and recordings from Officer Ramos' car related to the shooting.
9. DMAV data and recordings from Officer Torres' car related to the shooting.
10. Recording of Officer Whitted's interview with Det. Swann and Det. Vetrano related to the shooting.
11. All squad car communication from the morning of 3/1/13 related to the shooting or Officer Whitted, including text messages and any other data or recordings.
12. The administrative order delivered at St. David's Hospital by Sgt. Richard Guajardo #3440 to Officer Whitted.
13. All 911 complaints from John Schaefer for the prior nine months.
14. Det. Vetrano's complete investigation file.

The TCDA has no responsive information to items 2 – 4, 8, 9, 11 and 12. Items 6 and 7 have already been released to the requestor and to the public at large via press packets. The following exceptions address the remainder of the requested information (items 1, 5, 10, and 13 – 14).

Some of the requested information is excepted from disclosure under section 552.108.

Section 552.108 of the Government Code states in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

- (4) it is information that:

- (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

.....

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's entire file is necessarily a request for work product because "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380 (quoting *National Union Fire Insurance Company v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993, orig. proceeding)).

In this instance, the requestor seeks 14 categories of information, as described above. We believe that the request essentially encompasses a request for the TCDA's entire prosecution file. The requested information was created or assembled by a prosecutor in anticipation of or in the course of preparing for criminal litigation; in addition, *Curry* provides that the release of the requested information would reveal the mental impressions or legal reasoning of prosecutors in the TCDA. Accordingly, we believe that the TCDA may withhold the requested information pursuant to subsections (a)(4) and (b)(3) of section 552.108 of the Government Code. To the extent that your office finds that *Curry* is not applicable, we assert in the alternative that all prosecutor notes are excepted from disclosure under subsections (a)(4) and (b)(3) because they were prepared by a prosecutor in anticipation of or in the course of preparing for criminal litigation and contain the prosecutor's mental impressions. We have sent a representative sample for your review.

In the alternative, some of the requested information may be withheld under Government Code section 552.108(a)(2).

Government Code section 552.108 states in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Here, the requested information is related to an investigation that did not result in conviction or deferred adjudication; the TCDA objects to the information's release. Accordingly, we assert that, with the exception of basic information and the information already released, this information may be withheld under Government Code section 552.108(a)(2). We have sent a representative sample for your review.

In conclusion, we ask that you rule on whether the enclosed information must be released to the requestor. If you have any questions, please contact me at (512) 854-4168, or by e-mail at elizabeth.winn@co.travis.tx.us.

Sincerely,



Elizabeth Hanshaw Winn
Assistant County Attorney

Enclosures: request letter, requested information, representative samples.

c:

Dayna Blazey
Travis County District Attorney's Office
(emailed, without enclosures)

Robert Alden
Byrd Davis Furman & Alden LLP
707 West 34th Street
Austin, TX 78705-1204
(via email to

without enclosures)